

Gregory E. Conner

Response to Office Action dated February 2, 2009

REMARKS

Applicant requests the Examiner not to enter the amendment dated April 23, 2009 and instead to enter the presently submitted amendment.

Claims 1-28 are cancelled without prejudice. Claims 29-52 are newly added. Claims 29-52 are currently pending. The claims add no new matter. Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

I. INFORMATION DISCLOSURE STATEMENT

Applicant calls the Examiner's attention to the information disclosure statement filed herewith. Applicant request the Examiner to consider the items indicated there, to check them off the form and to send a copy of the checked form to Applicant.

II. INTERVIEW SUMMARY

Applicant thanks the Examiner for the telephonic interview of April 6, 2009 in which claims 19, 27 and 28 were discussed and Applicant agreed to cancel claims 1-18, and 20-26 without prejudice. U.S. Patent 6,589,481 to *Lin* was discussed and it was acknowledged that *Lin* does not disclose the use of peroxidase or thiocyanate.

III. CLAIM REJECTION UNDER 35 U.S.C. § 112

A. 35 U.S.C. § 112, FIRST PARAGRAPH

Claims 1, 2, 4-11, 18 and 21-26 stand rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement.

Without acceding to the propriety of the Examiner's rejection, and in order to expedite prosecution, Applicant has canceled the rejected claims without prejudice. This renders the rejection moot.

B. 35 U.S.C. § 112, SECOND PARAGRAPH

Claims 9, 18 and 27 stand rejected under 35 U.S.C. §112, second paragraph as failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicant requests reconsideration.

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Without acceding the propriety of this rejection, Applicant has canceled the rejected claims. This renders the rejection moot. The newly added claims do not refer to molarity of a compound in the lung fluid. Therefore, Applicant requests the Examiner to withdraw the rejection.

IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 103(A)

Claims 19, 20, 27 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. patent 6,589,481 (Lin et al.). Applicant requests reconsideration.

A reference cannot render an invention obvious if it does not recite or suggest every element of the claimed invention. Applicant has canceled claims 19, 20, 27 and 28 in favor of new claims 29-52.

Claim 29 is directed to an inhaler adapted to deliver a composition comprising aerosolized thiocyanate. Lin et al. does not recite or suggest an inhaler configured to deliver thiocyanate. Furthermore, as will be discussed below in more detail, Lin et al. does not disclose an inhaler, as that term is understood in the art. Therefore, Lin does not render claim 29 obvious.

Because it does not render independent claim 29 obvious, it follows that Lin et al. also does not render obvious the claims that depend from it -- 30-40. In particular, Lin et al. does not render claim 30 obvious, in part because it does not disclose or suggest an inhaler comprising both thiocyanate and H₂O₂.

New claim 41 is directed to an inhaler adapted to deliver an aerosolized composition to a lung of a person, wherein the composition comprises H₂O₂. Applicants traverse the rejection over Lin et al. on the ground that Lin et al. does not disclose or suggest an inhaler adapted to deliver a composition to a lung of a person.

The term “inhaler” is well known in the art. It refers not merely to an “intended use” of a device, but to implicit physical elements as well. More specifically, inhalers are understood to have dimensions that render them hand holdable and to have elements adapted to engage the mouth or nostrils of a person so as to deliver medication to the person’s lungs. See, for example, Exhibit 1 of the Amendment and Remarks dated November 17, 2008. For example, an inhaler may have a mouthpiece adapted to couple with an oral orifice of a person. (See, e.g., U.S. patent 6,223,746 (Jewett et al.) Fig. 1, # 126 and claim 13, which was incorporated by reference into the

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present specification.) A device that is not configured for inhalation by a person cannot be considered to be an “inhaler”.

The device of Lin et al. is not an inhaler. It claims to be adapted to engage a lumen of a medical instrument. It makes no mention of being an inhaler or being adapted for use by a person. There is no mention of the device of Lin et al. being hand-holdable. Referring to Fig. 1 of Lin et al., item #12 is a “connector” that connects with the medical instrument (10). The connector cannot be considered to be adapted for delivering a composition to a person’s lung through inhalation. For one thing, it does not protrude from the body of the device, i.e., it does not extend beyond the edge of sterilant reservoir 20. It is not clear how a person’s mouth could engage the connector to receive the composition. Rather, it has an opening into which the medical device is inserted. The nature of the pressure source for delivering the composition is not described and there is no indication that it is compatible with a hand held device. Therefore, there was no reasonable expectation of success that a person could use the device of Lin et al. as an inhaler. Nor has the Examiner explained how the device of Lin et al. could be so used. Accordingly, the device of Lin et al. cannot reasonably be construed to be an “inhaler” as that term is understood in the art. Furthermore, Lin et al. does not suggest modifying the device to render it suitable for use as an inhaler – it is used to sterilize medical instruments. Therefore, Lin et al. does not render obvious the claimed invention.

Regarding claims 42-52, these claims depend from claim 41. Because Lin et al. does not render claim 41 obvious, it also cannot render the claims that depend from claim 41 obvious.

For these reasons, Applicant respectfully requests the Examiner to withdraw the rejection of obviousness over Lin et al.

V. DOUBLE PATENTING

Claims 1, 2, 4-11, 18 and 20-26 stand rejected as being obvious over the claims of US 6,702,998. Without acceding the propriety of this rejection, Applicant has canceled the rejected claims without prejudice. This renders the rejection moot.

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CONCLUSION

In view of the amendments and remarks above, Applicant respectfully requests the Examiner to withdraw the rejections and move this case to allowance.

The Commissioner is authorized to charge any fees associated with this filing to Deposit Account No. 50-4950. If the Examiner would like to discuss any aspect of the action, he is invited to call John Storella at 510-501-0567.

Respectfully submitted,

JOHN STORELLA, P.C.

By:


John R. Storella
Registration No. 32,944

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John Storella, P.C.
6451 Hillegass Avenue
Oakland, CA 94618
Phone: 510-501-0567
Customer No. 87155